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UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK
Case No. 18-23538-rdd

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In the Matter of:

SEARS HOLDINGS CORPORATION, et al.,

Debtors.

- - - - -x

United States Bankruptcy Court
300 Quarropas Street, Room 248
White Plains, New York

June 20, 2019
10:06 AM

B E F O R E:
HON. ROBERT D. DRAIN
U.S. BANKRUPTCY JUDGE

1 18-23538-rdd Sears Holdings Corporation, et al.

2 Ch 11

3

4 Notice of Agenda of Matters Scheduled for Hearing on

5 June 20, 2019 at 10:00 a.m.

6

7 Motion of Milton Manufacturing, LLC to Allow and Compel

8 Payment of Administrative Expense Claim Under 11 U.S.C.

9 §503(b) for Craftsman Branded Goods Delivered to the Debtor

10 Post-Petition Filed by Joel D. Applebaum on behalf of Milton

11 Manufacturing, LLC [ECF No. 1477]

12

13 Third Omnibus Objection of Debtors to Motions for Relief

14 from Stay [ECF No. 3877]

15

16 Motion to Compel Payment of Post-Petition Rent and Related

17 Lease Obligations Pursuant to 11 U.S.C. §§ 105(a), 363(e),

18 (365(d)(3) and 503(b)(1)(A) and to Pay All Subsequent

19 Amounts Owed On a Timely Basis Filed by Robert L. LeHane on

20 behalf of Trustees of the Estate of Bernice Pauahi Bishop,

21 [document #2414]

22

23 Omnibus Objection of Transform to Licensor and Landlord

24 Motions to Compel Filed by Luke A. Barefoot on Behalf of

25 Transform Holdco LLC [ECF No. 2832]

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Debtors' Response and Reservation of Rights with Respect to
Motion of Trustees of the Estate of Bernice Pauahi Bishop,
d/b/a Kamehameha Schools, LLC to Compel Payment of
Post-Petition Rent and Related Lease Obligations Pursuant to
11 U.S.C. §§ 105(a), 363(e), 365(d)(3) and 503(b)(1)(A)
and to Pay all Subsequent Amounts Owed on a Timely Basis
[ECF No. 3169]

Motion for Entry of an Order Pursuant to Section 1114(d) of
the Bankruptcy Code Directing the Appointment of a Committee
of Retired Employees Filed by James N. Lawlor on Behalf of
Richard Bruce, Ronald Olbrysh [ECF No. 4054]

Debtors' Objection to Motion of Retirees Pursuant to Section
1114(d) of the Bankruptcy Code Filed by Jacqueline Marcus
[ECF No. 4238]

1 Qualified Joinder of the Official Committee of Unsecured
2 Creditors to the Debtors' Objection to Motion of Retirees
3 Pursuant to Section 1114(d) of the Bankruptcy Code Filed by
4 Ira S. Dizengoff on Behalf of Official Committee of
5 Unsecured Creditors of Sears Holdings Corporation, et al.
6 [ECF No. 4239]

7
8 Motion of Jeffrey Pfeiffer for Relief from the Automatic
9 Stay to Allow Civil Litigation on Appeal to Proceed Filed by
10 David J. Gallagher on Behalf of Jeffrey Pfeiffer [ECF No.
11 2633]

12
13 Second Omnibus Objection of Debtors to Motions for Relief
14 from Stay Filed by Garret A. Fail on Behalf of Sears
15 Holdings Corporation [ECF No. 3149]

16
17 Motion of Santa Rosa Mall, LLC for Relief from the Automatic
18 Stay and Memorandum in Support Thereof and/or to Declare
19 that the Insurance Proceeds Are Not Part of the Bankruptcy
20 Estate Filed by Sonia E. Colon on Behalf of Santa Rosa Mall,
21 LLC [ECF No. 3475]

1 Debtors' Objection to Motion of Santa Rosa Mall, LLC for
2 Relief from the Automatic Stay and Memorandum in Support
3 Thereof and/or to Declare that the Insurance Proceeds Are
4 Not Part of the Bankruptcy Estate [ECF No. 4224]

5

6 Notice of Assumption and Assignment of Additional
7 Designatable Leases [ECF No. 3298]

8

9 Supplemental Objection of Bradshaw Westwood Trust to
10 (1) Debtors' Proposed Cure Amount and Possible Assumption
11 and Assignment of Lease, and (2) Notice of Assumption and
12 Assignment of Additional Designatable Leases, and
13 Supplemental Demand for Security Pursuant to
14 11 U.S.C. § 365(1) [ECF No. 3579]

15

16 Supplemental Objections to Cure Amount, Adequate Assurance
17 Information, and Restrictive Covenant Conditions of Landlord
18 Starboard Platform Brighton JV LLC in Response to Notice of
19 Assumption and Assignment of Additional Designatable Leases
20 [ECF No. 3851]

21

22 KDI Rivergate Mall, LLC's (A) Objection to Notice of
23 Assumption and Assignment of Additional Designatable Leases,
24 (B) Objection to Proposed Cure Amount, and (C) Restrictive
25 Covenant Objection [ECF No. 3544]

Supplemental Objection of Vornado Realty L.P. and Certain of
its Wholly-Owned and Controlled Subsidiaries, as Landlord,
to Transform Holdco LLC's Notice of Assumption and
Assignment of Additional Designatable Lease [ECF No. 3529]

Supplemental Objection of Interprop Bedford, LLC, as
Landlord, to Transform Holdco LLC's Notice of Assumption and
Assignment of Additional Designatable Leases [ECF No. 3526]

Motion of Tata Consultancy Services Ltd. to Allow and Compel
Payment of Administrative Expense Claim Under
11 U.S.C. § 503(b)(1)(A) for Services Performed
Post-Petition [ECF No. 3949]

McAndrews, Held and Malloy's First Interim Fee Application
for Compensation Earned from October 15, 2018 Through
February 28, 2019 [ECF No. 3087]

FEE MATTERS

First Application for Final Professional Compensation of
Wachtell, Lipton, Rosen & Katz for Amy R. Wolf, Debtors'
Attorney; Period: 10/15/2018 to 3/18/2019 [ECF No. 3185]

1 First Interim Fee Application of Akin Gump Strauss Hauer &
2 Feld LLP as Counsel to the Official Committee of Unsecured
3 Creditors for Allowance of Compensation for Services
4 Rendered and Reimbursement of Expenses for the Period of
5 October 24, 2018 Through and Including February 28, 2019
6 [ECF No. 3190]

7
8 First Interim Fee Application of Young Conaway Stargatt &
9 Taylor, LLP, as Conflicts Counsel for the Debtors for the
10 Period from October 15, 2018 through February 8, 2019 [ECF
11 No. 3191]

12
13 First Interim Application of Houlihan Lokey Capital, Inc.,
14 Investment Banker to the Official Committee of Unsecured
15 Creditors for Interim Allowance of Compensation for
16 Professional Services Rendered and Reimbursement of Actual
17 and Necessary Expenses Incurred from October 29, 2018
18 Through February 28, 2019 [ECF No. 3194]

19
20 First Interim Application of FTI Consulting Inc., Financial
21 Advisor to the Official Committee of Unsecured Creditors of
22 Sears Holdings Corporation, et al., for Interim Allowance of
23 Compensation and Reimbursement of Expenses for the Period
24 from October 25, 2018 Through February 28, 2019 [ECF No.
25 3195]

1
2 First Application for Interim Professional Compensation of
3 Prime Clerk LLC, as Administrative Agent to the Debtors, for
4 Services Rendered and Reimbursement of Expense for the
5 Period from the Commencement Date Through February 28, 2019
6 [ECF No. 3196]

7
8 First Application for Interim Professional Compensation of
9 Evercore Group L.L.C. for Allowance of an Administrative
10 Claim for Compensation for Services Rendered and
11 Reimbursement of Expenses Incurred as Investment Banker to
12 the Debtors for the Period from October 15, 2018 Through and
13 Including March 14, 2019 [ECF No. 3204]

14
15 First Application for Interim Professional Compensation of
16 Alvarez & Marsal North America, LLC as Financial Advisors
17 for the Debtors from October 15, 2018 Through February 28,
18 2019 [ECF No. 3205]

19
20 First Application for Interim Professional Compensation of
21 Stout Risius Ross, LLC, Real Estate Consultant and Advisor
22 for the Debtors, for the Period from November 21, 2018
23 Through and Including February 28, 2019 [ECF No. 3206]

1 First Application for Interim Professional Compensation of
2 Paul, Weiss, Rifkind, Wharton & Garrison LLP, Attorneys for
3 the Debtors and Debtors in Possession, for the Period from
4 October 15, 2018 Through and Including February 28, 2019
5 [ECF No. 3207]

6
7 First Interim Fee Application of Deloitte Transactions and
8 Business Analytics LLP for Compensation for Services
9 Rendered and Reimbursement of Expenses Incurred as
10 Bankruptcy Advisor from November 1, 2018 Through February
11 28, 2019 [ECF No. 3213]

12
13 First Interim Fee Application of Deloitte Tax LLP for
14 Compensation for Services Rendered and Reimbursement of
15 Expenses Incurred as Tax Services Provider From October 5,
16 2018 Through February 28, 2019 [ECF No. 3220]

17
18 First Interim Fee Application of Deloitte & Touche LLP for
19 Compensation for Services Rendered and Reimbursement of
20 Expenses Incurred as Independent Auditor and Advisor from
21 October 5, 2018 Through February 28, 2019 [ECF No. 3223]

22
23 First Interim Fee Application of Lazard Freres & Co. LLC,
24 Investment Banker to the Debtors, for the Period from
25 October 15, 2018 through February 28, 2019 [ECF No. 3217]

1
2 First Application of Weil, Gotshal & Manges LLP, as
3 Attorneys for Debtors, for Interim Allowance of Compensation
4 for Professional Services Rendered and Reimbursement of
5 Actual and Necessary Expenses Incurred from October 15, 2018
6 Through and Including February 28, 2019 [ECF No. 3224]
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25 Transcribed by: Lisa Beck

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1 P R O C E E D I N G S

2 THE COURT: Please be seated. Okay. Good
3 morning. In re Sears Holdings Corporation.

4 MR. SCHROCK: Good morning, Your Honor. Ray
5 Schrock, Weil, Gotshal & Manges, on behalf of the debtors.
6 I'm here with my partners, Jacqueline Marcus and Garrett
7 Fail.

8 THE COURT: Good morning.

9 MR. SCHROCK: Good morning.

10 Your Honor, before we move into the agendas -- the
11 matters set for agenda today, I did want to note just a very
12 important case development for the Court and parties-in-
13 interest.

14 Your Honor, I'm very pleased to announce that
15 following the disclosure statement hearing and after several
16 rounds of good faith, efforts to settle all plan terms with
17 the unsecured creditors' committee, the debtors and the
18 unsecured creditors' committee have agreed in principle on
19 the terms of a global settlement for the UCC support of a
20 plan of liquidation.

21 I'll highlight some of the key terms and just
22 address a couple of scheduling matters related to them.

23 In terms of the liquidating trust board
24 composition, we've agreed to make a change. It was
25 previously a three-member board to whom the debtors won from

1 the UCC. We're going to a five-member board, three
2 designated by the UCC in the very near term, two that would
3 be designated by the debtors. The designees will not be
4 current holders of claims against the debtors' estate. We
5 are putting a disclosure in the liquidating -- we're putting
6 a disclosure related to liquidating trust funding that we --
7 to reflect an anticipated funding of \$25 million into the
8 litigation trust. That will not be a condition precedent
9 but that is a disclosure item.

10 We've also agreed upon factors to be considered in
11 selecting a liquidating trustee as well as primary
12 litigation counsel for the liquidating trust. And we have a
13 procedure that all of the parties have agreed upon for
14 selecting those board members in the near term, selecting
15 counsel in the near term, and then if there's a disagreement
16 that there can be parties -- a way for parties to raise
17 objection relating to those selection items. We're very
18 hopeful that won't ever be necessary but it was really built
19 around kind of driving consensus where four out of five
20 members would have to agree and that the standard would be
21 the best interest of the estate.

22 We've also given the UCC consent rights related to
23 settling estate causes of action related to APA settlement
24 issues to the extent they result in a settlement or
25 impairment of estate causes of action, 507(b) issues as well

1 as administrative claim issues.

2 This was not easy but it was well worth it. As a
3 result, we did have a delay in commencing solicitation.
4 But -- and as a result, just mechanically, Your Honor, I
5 think it's impossible to get there by July 23rd. I still
6 think it will be an immense savings for the estate not
7 having the debtors and the unsecured creditors' committee
8 litigating with one another over these items and other plan
9 related items. So we're working with the UCC on those plan
10 modifications.

11 We've notified certain of the key
12 parties-in-interest including the second lienholders, the
13 so-called 507(b) claims holders, the United States trustee
14 and, you know, we're quite hopeful that this will at least
15 eliminate one key barrier to confirmation of the debtors'
16 plan. And what we'd like to do is just talk with parties
17 about the -- and with the Court-- I know we've been in touch
18 with the Court about a -- with your deputy around another
19 revised date in August for confirmation.

20 I think we need to huddle up with the unsecured
21 creditors' committee and the parties to make sure that we
22 can make sure everyone's available and ensure those dates in
23 August, come back to the Court and I think related to the
24 507(b) litigation, which has its own separate schedule,
25 we're just going to huddle up with the parties around -- in

1 light of the adjourned confirmation date and if there's any
2 issues around scheduling for that piece of the litigation,
3 we would come back to the Court and address it in a separate
4 scheduling conference.

5 THE COURT: Okay.

6 MR. SCHROCK: Okay.

7 THE COURT: All right. Well, this is obviously a
8 good development. Based on your summary, it does not seem
9 to me that you need to circulate another disclosure
10 statement and get another disclosure statement approval
11 hearing scheduled, that you can simply amend the disclosure
12 statement that was previously approved. You still have the
13 blackline with all the changes addressing the committee's
14 objections so that should be fairly easy to deal with.

15 It doesn't sound like these are -- these are
16 important but it doesn't sound like these are complicated
17 provisions to spend a lot of time drafting --

18 MR. SCHROCK: Correct.

19 THE COURT: -- redrafting the plan over. So --

20 MR. SCHROCK: That's right, Your Honor. And the
21 key -- I should have mentioned. These are not economic
22 terms so --

23 THE COURT: Well, they're important terms.

24 MR. SCHROCK: -- but they're important terms --

25 THE COURT: Right.

1 MR. SCHROCK: -- in terms of I think that from a
2 focus of some of the other parties-in-interest that these
3 were not things that would change any of the numbers that
4 were in the disclosure statement --

5 THE COURT: Right.

6 MR. SCHROCK: -- previously circulated.

7 THE COURT: Except hopefully, it'll reduce the
8 cost of the case.

9 MR. SCHROCK: Yes. Yes. That is our hope, Your
10 Honor.

11 THE COURT: Okay. I guess one question I had is
12 in addition to just the drafting, which should be fairly
13 simple, and making sure that the August dates or date works,
14 is there any other -- you mentioned that people would be
15 nominating various people?

16 MR. SCHROCK: Uh-huh.

17 THE COURT: But is that contemplated to be done
18 within the time frame we're focusing on here?

19 MR. SCHROCK: Yes, Your Honor. So we're
20 contemplating that we would nominate respective board
21 members in the very near term --

22 THE COURT: Okay.

23 MR. SCHROCK: -- over the coming days, that those
24 parties would then begin the selection of professionals in
25 advance of the confirmation hearing. But we think it's

1 important to resolve certain key issues prior to -- like
2 around the APA, for instance, and other issues, you know, in
3 advance of confirmation before that happens.

4 THE COURT: Okay.

5 MR. SCHROCK: But we're still -- I would give you
6 specific dates but we're literally still going back and
7 forth in light of the adjourned confirmation hearing date.

8 THE COURT: Right. Okay. Very well. Do you have
9 anything to add, Mr. Dublin?

10 MR. DUBLIN: Good morning, Your Honor. Phil
11 Dublin, Akin Gump, for the committee.

12 The only thing I'd like to add, one, is to thank
13 the debtors and the special committee for their cooperation
14 in reaching the agreement that we did. And the committee
15 would anticipate and fully expects to be able to submit a
16 letter with the disclosure statement supporting the plan and
17 recommending that parties vote in favor of the plan.

18 As Mr. Schrock mentioned, we expect to have our
19 designees determined within the next day or two with
20 respect --

21 THE COURT: Oh, okay.

22 MR. DUBLIN: -- with respect to the board.

23 THE COURT: All right.

24 MR. DUBLIN: And then we'll work with the debtors
25 in order to have that board up and running as a shadow board

1 in order to start working on the issues that they need to
2 address as we get towards confirmation and thereafter.

3 THE COURT: Okay. Very well. Thank you.

4 MR. DUBLIN: Thank you.

5 THE COURT: All right.

6 MR. SCHROCK: Your Honor, just one last item. I
7 was going to get this last but I do want to thank the
8 unsecured creditors' committee, the members of the
9 restructuring committee, the subcommittee and their
10 professionals for working together on this. This is a very
11 important settlement for the estate. I don't want to
12 understate it. It's really a seminal moment in the
13 conclusion of these cases.

14 THE COURT: Okay. I agree with that.

15 All right. Anything else to report or should we
16 just move to the agenda?

17 MR. SCHROCK: We'll move to the agenda next, Your
18 Honor.

19 THE COURT: Okay.

20 MS. MARCUS: Good morning, Your Honor. Jacqueline
21 Marcus, Weil Gotshal & Manges, on behalf of Sears Holdings
22 Corporation and its affiliated debtors.

23 Before we actually get to the first item on the
24 agenda, Your Honor, I wanted to apologize for the confusion
25 yesterday regarding the agenda letter. And we had

1 inadvertently left off a couple of items and spoke to
2 chambers and I think the preference was that we not refile.
3 So I just wanted to note two matters that are not going
4 forward today but that should have been included on the
5 agenda and that weren't just so that the Court and other
6 parties are aware of the status.

7 THE COURT: Okay.

8 MS. MARCUS: The first is the hearing on the
9 motion by QBE Insurance Corporation for relief from the
10 automatic stay for purposes of filing declaratory litigation
11 in the U.S. district court against former directors. It's
12 ECF number 3910 and the response which was ECF number 421.
13 That motion has been adjourned to the July 11th omnibus
14 hearing date.

15 THE COURT: Okay.

16 MS. MARCUS: The second is the notice of
17 presentment of stipulation agreement and order authorizing
18 debtors to assume and assign unexpired nonresidential real
19 property leases for the Quincy, Illinois location. It's ECF
20 number 3970 and the objection filed by the Victor Reagan
21 Family Trust. And that's adjourned to the July 11th omnibus
22 hearing date as well.

23 THE COURT: Okay.

24 MS. MARCUS: The first item on the agenda, Your
25 Honor, is the motion of the trustees of the estate of

1 Bernice Pauahi Bishop doing business as the Kamehameha --

2 THE COURT: Kamehameha.

3 MS. MARCUS: Okay. You got it -- Schools to
4 compel payment of post-petition rent and related
5 (indiscernible). It's ECF number 2414.

6 THE COURT: Right.

7 MS. MARCUS: Your Honor, we've been before you a
8 few times on this matter. And I'm happy to say we've
9 reached what we think is a very favorable resolution for the
10 benefit of all parties.

11 At the heart of the dispute was the landlord's
12 contention that the relevant lease included an escalation
13 clause and that the post-petition rent paid by the debtors
14 was inadequate in light of the rent increase. Due to the
15 fact that Transform has the obligation to pay rent during
16 the designation rights period, negotiation of a resolution
17 was really a three-way process.

18 The parties reached an agreement. And the terms
19 of the agreement are reflected in the proposed order that
20 was filed on June 18th at ECF number 4270.

21 The salient terms of the resolution reflected in
22 the order are as follows: the lease is rejected as of April
23 15th, 2019. The amount of the post-petition arrears owed by
24 the debtors is set at \$700,428. Notably, Your Honor, we
25 settled on a revised rental rate that's halfway between what

1 the landlord requested and what the debtors contended the
2 revised rent should be. The landlord also agreed that at
3 this time, it will only seek payment from the debtors of 80
4 percent of that post-petition arrearage amount. And the 20
5 percent will be treated as an administrative expense claim
6 that will be paid under the plan.

7 The payment to be made by the debtors, which is a
8 payment of approximately \$560,000, will be paid from the
9 adequate protection account previously set up for the
10 benefit of the landlord. That account was in the amount of
11 approximately \$759,000. So there will be about \$190,000
12 released to the debtors that they can use.

13 Finally, Transform has agreed to pay the landlord
14 its share of the post-petition arrearage and its share is
15 \$487,460 plus a number -- an additional amount for
16 attorneys' fees.

17 So unless you have any other questions, Your
18 Honor, we request the Court enter the proposed order.

19 THE COURT: So it's going to be a proposed
20 stipulation order or is this just an order --

21 MS. MARCUS: It's just an order.

22 THE COURT: -- that will be attached --

23 MS. MARCUS: That's correct.

24 THE COURT: The agreement will be attached to
25 it --

1 MS. MARCUS: Actually --

2 THE COURT: -- for reference.

3 MS. MARCUS: -- the parties just agreed on the
4 form of the order.

5 THE COURT: Okay.

6 MS. MARCUS: So we didn't do a stipulation. It's
7 just the --

8 THE COURT: So the order itself is the
9 settlement --

10 MS. MARCUS: That's correct.

11 THE COURT: -- as well as the order. Okay.

12 This -- is counsel for the trustees of Bernice
13 Bishop -- are they here? No?

14 MS. MCLOUGHLIN: Yes, Your Honor. I'm on the
15 phone.

16 THE COURT: Okay. Anything to add to that, ma'am?

17 MS. MCLOUGHLIN: No. We agree with everything
18 counsel has represented. And we want to thank the parties
19 for resolving this complicated matter.

20 THE COURT: Okay. Well, I'm fairly familiar with
21 this matter because it has been carried for quite a while.
22 And you can e-mail the proposed order for entry to chambers.

23 MS. MARCUS: Thank you, Your Honor.

24 THE COURT: Thanks.

25 MS. MARCUS: Number 2, Your Honor, on the agenda

1 is the 1114 motion filed by certain retirees of Sears. And
2 that's going to be handled by Mr. Lawlor from the Wollmuth
3 firm.

4 THE COURT: Okay.

5 MR. LAWLOR: Good morning, Your Honor. James
6 Lawlor, Wollmuth Maher & Deutsch, on behalf of retirees,
7 Richard Bruce and Ronald Olbrysh. That's how you say his
8 name. So good morning.

9 THE COURT: Good morning.

10 MR. LAWLOR: Your Honor, we're here because Sears
11 terminated the life insurance benefits of, roughly, 29,000
12 former employees who were part of a class action that led to
13 a settlement in 2001 which was approved by district court in
14 Chicago in 2001. And I don't think it's disputed that the
15 settlement itself makes it clear that the benefits would
16 never be reduced or modified beyond the schedule in that
17 settlement. And as a result, we believe that those benefits
18 were vested. And I think the (indiscernible) document we've
19 seen that suggests to the contrary is the summary plan
20 description that was circulated in 2007 which is apparently
21 the only plan document that the debtors have been able to
22 find and it contains what appears to be a reservation of
23 rights in that document.

24 Our view is that that document cannot trump a
25 court-approved class action settlement. It can't amend the

1 terms. It certainly wasn't agreed to by the, at that time,
2 90,000 employees who were part of the class.

3 THE COURT: Can I interrupt you just for a second?

4 MR. LAWLOR: Sure.

5 THE COURT: The stipulation of settlement wasn't
6 attached in the papers in connection with this motion to
7 form --

8 MR. LAWLOR: Yes. They were --

9 THE COURT: -- a committee.

10 MR. LAWLOR: I'm sorry.

11 THE COURT: We dug it out because it was -- when
12 there's an objection to the disclosure --

13 MR. LAWLOR: Yes.

14 THE COURT: -- it was attached.

15 MR. LAWLOR: Yes.

16 THE COURT: So I have that. I note that was still
17 subject to the district court's approval. I don't have that
18 order or -- you know, I don't know whether this is the final
19 version or were there any changes. Is there any --

20 MR. LAWLOR: So, Your Honor --

21 THE COURT: -- understanding on that?

22 MR. LAWLOR: So let me clarify.

23 THE COURT: And I appreciate you were class
24 counsel. So --

25 MR. LAWLOR: Yeah. I wasn't class counsel but we

1 did do a lot of work to try to find --

2 THE COURT: You were or weren't?

3 MR. LAWLOR: I was not.

4 THE COURT: Oh. Your colleague was --

5 MR. LAWLOR: Mr. Mulder was.

6 THE COURT: -- who appeared last time. Okay.

7 MR. LAWLOR: So the actual stipulation was
8 attached to the reply as Exhibit A that we filed on Tuesday
9 which does include all the signature pages because I believe
10 the version that was in the disclosure statement missed the
11 last page. So that -- we did provide that.

12 The minute order that was provided was attached to
13 the Mulder declaration was the order that we could find.
14 We've requested the Court get the documents from the
15 archives to then produce the actual document and the order
16 that approved the settlement at the fairness hearing.

17 We understand that the archives, they've been sent
18 to Chicago. We don't know if they're in Chicago. We
19 haven't found the document yet.

20 THE COURT: All right.

21 MR. LAWLOR: So what we have is the settlement
22 that Mr. Mulder believes is the final. And we have the
23 minute order that says it was approved at a fairness
24 hearing. The question is was there a modification of that
25 settlement subsequent to the document that we produced.

1 THE COURT: And he doesn't think --

2 MR. LAWLOR: We don't believe so.

3 THE COURT: He doesn't think so.

4 MR. LAWLOR: No.

5 THE COURT: Okay. So my other question is that
6 the class is defined in your stipulation. In fact, there
7 was an attachment with the list and then a mechanism to add
8 people to the list if before the approval --

9 MR. LAWLOR: Yes.

10 THE COURT: -- (indiscernible). When you refer to
11 the retirees, are you referring to that class or to all
12 retirees including people that retired, you know, in 2010,
13 for example, or after the settlement?

14 MR. LAWLOR: So as I understand the settlement, it
15 -- only for those employees that were prior to 1997 or
16 there's like a little wedge there in '97. They were
17 entitled to the members of the class and received a benefit
18 for the balance of their life.

19 THE COURT: Right.

20 MR. LAWLOR: Subsequent retirees would not have
21 fallen within that class.

22 THE COURT: Right.

23 MR. LAWLOR: So it was a fixed class at that time
24 as I understand it.

25 THE COURT: So does your motion cover all retirees

1 or just those class members?

2 MR. LAWLOR: It's only with the class members that
3 I've been asked to represent, Your Honor --

4 THE COURT: Okay.

5 MR. LAWLOR: -- not all retirees.

6 THE COURT: All right. Okay. Thanks.

7 MR. LAWLOR: Okay. So, Your Honor, so we are
8 faced with a situation where the debtor notwithstanding the
9 stipulation, has terminated the benefits --

10 THE COURT: Right.

11 MR. LAWLOR: -- which causes a number of issues
12 for a lot of people. Obviously, the retirees are in a
13 situation where they have to go try to find replacement
14 insurance at 80 years old. I don't think that's very --

15 THE COURT: Right. And this is life insurance.

16 MR. LAWLOR: -- economical. It's life insurance.
17 So -- and there are retirees who are, unfortunately, you
18 know, dying daily. We've had at least three since I've been
19 involved with the case. I've been told that there are three
20 that have passed away. And there are a number of retirees
21 that have called us and tried to -- they've tried to find
22 replacement insurance. And they're still trying.

23 THE COURT: Can I interrupt you again?

24 MR. LAWLOR: Sure.

25 THE COURT: As I read the debtors' response --

1 maybe this is more a question for the debtors' counsel. The
2 insurers have agreed to carry this through August. So I
3 guess if someone died in June or May, they get the benefit?

4 I --

5 MR. LAWLOR: I don't think there's --

6 THE COURT: I don't know the answer to that
7 question. I wasn't sure what that meant, that sentence
8 meant.

9 MS. MARCUS: That's true with respect, Your Honor,
10 to the Allstate policy.

11 MR. LAWLOR: It's only one --

12 MS. MARCUS: It's a smaller policy.

13 THE COURT: Okay.

14 MS. MARCUS: It's not a larger security
15 (indiscernible).

16 THE COURT: Okay.

17 MR. LAWLOR: Right. That's the 12 former senior
18 executives.

19 THE COURT: Right.

20 MR. LAWLOR: They've -- that's what the debtors
21 have done with them. They had not done that for the --

22 THE COURT: All right.

23 MR. LAWLOR: -- 29,000 retirees.

24 THE COURT: If someone unfortunately passes away
25 in that other policy before August, they're --

1 MR. LAWLOR: Right.

2 THE COURT: -- covered although they -- people who
3 don't --

4 MR. LAWLOR: Right.

5 THE COURT: -- should be looking at least, right?

6 MR. LAWLOR: Right. The issue, though, that that
7 creates is that, under 1114, if the benefits weren't
8 properly terminated then the debtors breach the vested
9 benefit requirement. They're now administrative expenses
10 because the way 1114 reads, if you don't properly terminate,
11 you generate an administrative expense priority for the
12 unpaid benefit during that period of time until termination.
13 And there was no preliminary hearing. There were none of
14 the usual protections for either the estate or the retirees.
15 So we're at the point now where it's been several
16 months. I understand the debtors have a very delicate case.
17 It's obviously not one of the more solvent large cases that
18 we have. But it appears to me just from 10,000 feet they're
19 creating more expenses than they're saving because unless
20 those benefits are properly terminated, they're going to
21 have a very large administrative claim.

22 The other big issue that comes in here is I don't
23 know if any of these retirees received notice of a bar date.
24 I don't know if any of these retirees were advised of an
25 administrative bar date. I suspect none of them have been.

1 You know, there's no mechanism in place to tell them that
2 they, in fact, may have a claim.

3 So our view is that a committee could be very
4 helpful to resolve that. I still think, under 1114, the
5 committee's required. Once they're vested, I know there's a
6 long -- a lengthy discussion in the debtors' papers about,
7 well, if we have a liquidating plan, things are judged
8 differently. I think they're judged -- you call the balls
9 strikes on the motion. You don't judge them before the
10 motion's filed. And what the debtors are suggesting to the
11 Court is there's only one outcome here. It's only going to
12 be a rejection. Why bother with this process. And I think
13 that presumes a lot of things that really haven't been fully
14 vetted. I mean, if that was the case, the 60 Yankees would
15 have beat the Pirates and the Patriots would have stayed
16 undefeated. You have to play the game because we need to
17 figure out what is the best approach. It may very well be
18 at the end of the day the debtors make the case and it
19 should be rejected, but at least the process will have
20 played out and we'll know how to notify people. We'll know
21 what their rights and we'll be able to tell them. I don't
22 think this is a long-term engagement. I think it's a very
23 quick situation we've got to deal with and get it resolved
24 because every day that goes by, there is a growing
25 administrative expense.

1 I also note that Judge Gerber had to deal with
2 this issue and Judge Peck also had to deal with this issue.
3 And they've attached the transcripts, the debtors. You
4 know, Judge Gerber -- he very thoughtfully thought through
5 it and the benefits weren't vested. And even at the end of
6 that process, he said, well, it appears the benefits aren't
7 vested but I'm not going to actually deny appointment of a
8 committee. I'm going to deny without prejudice and you can
9 move to reconsider if you find facts that really support the
10 appointment of a committee.

11 Lehman Brothers, Judge Peck, was even more
12 complicated. Judge Peck said I'm not appointing a committee
13 but, Debtors, if you want this relief that you've asked for,
14 you're going to go and take care of these people. And, in
15 fact, I'm pretty sure Lehman retained a lawyer that was
16 funded by the estate who evaluated whether those benefits
17 were actually vested and submitted a report to the Court
18 that explained the whole situation with the benefits.

19 So even in both of those cases, which were
20 liquidating cases essentially, the Court didn't just simply
21 deny the right to an 1114 committee and they actually
22 entered some relief. Here, we have, in our view, vested
23 benefits. We think there should be a committee. What the
24 ultimate relief might be, you know, hopefully, we can come
25 up with something that is amenable and that protects both

1 sides of the equation here.

2 With respect to the issue of cost and expense, you
3 know, I recognize that every professional is a dollar for
4 dollar reduction in whatever ends up going to unsecured
5 creditors. But these are 70, 80, 90 year old retirees who
6 have just been told their benefits are terminated. They
7 don't know their rights. They don't understand. They don't
8 have anybody to represent them. There's no union. This is
9 not a situation where there's an alternative. They're
10 entitled to some representation. It's not -- you know, I'm
11 not here to negotiate the plan. I'm not here to start
12 litigation. I'm here hopefully to get a committee that can
13 perform its service for the benefit of these retirees.

14 THE COURT: Okay.

15 MR. LAWLOR: Thank you.

16 THE COURT: Would you contemplate if I appointed a
17 committee having any other professionals besides counsel?

18 MR. LAWLOR: I would talk to the debtors about
19 that, but, I mean, if it's somebody that can be -- if they
20 need an actuary, we don't need two actuaries. If they need
21 someone to cal -- to me, I don't think that it's that
22 complicated, Your Honor, because I think these guys'
23 insurance companies have tables that can figure out what
24 really is the ben -- you know, the cost of the benefit
25 versus what's being given up. I think the big issue is

1 probably notice because when you do -- if it does get
2 rejected, which is probably a good chance, they're going to
3 be noticed to file claims.

4 THE COURT: Right. But that wouldn't be a
5 committee responsibility.

6 MR. LAWLOR: No, it wouldn't be. But it would be
7 how to reach them.

8 THE COURT: You'd look at the notice.

9 MR. LAWLOR: Yeah.

10 THE COURT: You would obviously look at the
11 notice.

12 MR. LAWLOR: How to reach them. I mean, it's --

13 THE COURT: Right.

14 MR. LAWLOR: But I don't think it's a -- no
15 accountants, no financial advisors, you know --

16 THE COURT: Okay.

17 MR. LAWLOR: Thank you.

18 THE COURT: All right. Thank you.

19 Does the government want to say anything more than
20 its statement in support?

21 MR. GERSON: Leonard Gerson representing U.S.
22 Department of Labor. Good morning.

23 THE COURT: Good morning.

24 MR. GERSON: I agree with what Mr. Lawlor said
25 about the inability of the debtors so far to have -- to

1 demonstrate that that stipulation's not enforceable. And if
2 that stipulation's enforceable, that means that people were
3 vested. And if people are vested, that means that the
4 exception that the carved out delphi doesn't apply.

5 So Congress was very clear that until a retiree
6 plan was modified through a Section 1114 process, retirees
7 get their benefits. That's the whole premise of 1114. So
8 we --

9 THE COURT: Right.

10 MR. GERSON: So that's the situation.

11 THE COURT: I mean, the only disagreement between
12 me and the Visteon court, the Third Circuit, is what it
13 means to modify a plan. But you're saying that's irrelevant
14 here because they're vested. The debtors don't have the
15 right under the plan to terminate.

16 MR. GERSON: That's right. I mean, once the 1114
17 process begins, then the Court's in a position to exercise
18 its judgment after -- under 1114 --

19 THE COURT: Right.

20 MR. GERSON: -- after there's appropriate
21 discussions.

22 THE COURT: If the benefits are vested.

23 MR. GERSON: That's right.

24 THE COURT: Right. Okay.

25 MR. GERSON: That's right. And furthermore, I

1 think when this whole thing gets played out, I'm not sure of
2 the best way for the retirees to be protected. There's
3 going to have to be a -- I'm not sure the retirees, given
4 their age, et cetera, are going to be in a position to
5 participate in the bankruptcy the way your typical creditor
6 would. There might have to be a special process developed.
7 But that wouldn't have to go on prior to confirmation.
8 There could be a reserve established of some sort.

9 THE COURT: Well, I'm sorry. I thought you were
10 just still for the fact that they need a committee because
11 they need a committee.

12 MR. GERSON: They need a committee. Need a
13 committee --

14 THE COURT: With a --

15 MR. GERSON: -- to work that out.

16 THE COURT: With a lawyer, yeah. Okay.

17 MR. GERSON: Thank you, Your Honor.

18 THE COURT: Okay.

19 MS. MARCUS: Jacqueline Marcus again, Your Honor,
20 for Sears.

21 Your Honor, the decision to terminate the
22 retirees' plan was certainly a difficult one for the
23 debtors. The facts here are very different than the
24 circumstances of most of the cases that we've all read about
25 termination of benefits under 1114.

1 The debtors sold substantially all of their assets
2 on February 11th. In the context of the sale negotiations,
3 the debtors tried to get the buyer to assume these life
4 insurance benefits but the buyer wasn't willing to do that.
5 There's simply no corpus here from which to pay death
6 benefits to 29,000 former Sears employees. And while the
7 benefit itself to which each employee is entitled is not all
8 that large, when you multiply that by 29,000 employees, it
9 turns out to be a huge number.

10 With respect to the suggestion that the debtors
11 establish a reserve, if we were to do that, it would be \$145
12 million and the debtors clearly don't have that kind of
13 money.

14 The suggestion that the debtors would have to pay
15 retiree benefits or make payments for this claim in
16 perpetuity --

17 THE COURT: No.

18 MS. MARCUS: -- it's just unrealistic.

19 THE COURT: But we're here just on the motion to
20 form a committee.

21 MS. MARCUS: Okay. Well, I guess our point, Your
22 Honor, and our objection is that the purpose of appointing a
23 committee under 1114 and the whole 1114 process as laid out
24 in the Code, really doesn't make sense in the context of
25 these cases.

1 THE COURT: But there's cases acknowledge that and
2 then nevertheless say that's what Congress said.

3 MS. MARCUS: I can't really quibble with that,
4 Your Honor.

5 THE COURT: With the one exception of the case
6 that Judge Lifland disagreed with.

7 MS. MARCUS: I can't take issue with that, Your
8 Honor, because that's what they say.

9 THE COURT: Right.

10 MS. MARCUS: I would note that in the cases where
11 there was a question of whether 1114 applies in a
12 liquidating Chapter 11, it was actually the debtors who were
13 arguing that 1114 should apply and the employees who were
14 arguing that it shouldn't apply. So the context was a bit
15 different.

16 THE COURT: Right.

17 MS. MARCUS: We just don't think that there's any
18 practical point to be served by the appointment of a
19 committee. And many of the things that were alluded to a
20 few moments ago can be done without a committee. So to the
21 extent -- and I can't tell the Court today that all of those
22 retirees received notice of the bar date. I just don't
23 know. But if they haven't, then the debtors, of course --

24 THE COURT: Right.

25 MS. MARCUS: -- would be prepared to extend the

1 bar date for those retirees to allow them to file claims.

2 THE COURT: But it doesn't seem to me that there
3 is a risk that if the 1114 process isn't gone through --
4 and, of course, Congress did provide that it could be gone
5 through quickly. A court will rule that these claims go on
6 as administrative expenses through whenever a plan is
7 confirmed. And then you have also 1129(a)(13) which may
8 prohibit confirmation of a plan.

9 So there's risk in taking a position that only one
10 Court has ever taken before and that Court has been
11 criticized for taking it which is that in liquidation, you
12 shouldn't appoint a retirees committee.

13 MS. MARCUS: Let me get back to the question of
14 whether the benefits have vested, Your Honor.

15 THE COURT: Right.

16 MS. MARCUS: I don't think there's any question
17 although the evidence isn't the strongest. We don't dispute
18 that the stipulation of settlement is actually the
19 stipulation of settlement.

20 THE COURT: Right.

21 MS. MARCUS: That was entered into. But what we
22 haven't found is any indication that the debtors, in fact,
23 went forward and amended the plan to provide that the
24 benefits would not be changed.

25 THE COURT: Right.

1 MS. MARCUS: We're at a little bit of a
2 disadvantage given the transition to Transform. But we have
3 been working with the employees who are now Transform
4 employees to find anything we can find regarding the
5 administration of a plan. And we just haven't been able to
6 find any amendments.

7 The movants mentioned that all we've provided is
8 that SPD, the summary of plan document -- the summary plan
9 document. We don't think there is something called the
10 retiree plan separate and apart from that SPD. And it says
11 in two places that the benefits are subject to change if the
12 debtors -- in the debtors' discretion.

13 THE COURT: And that's post-2002.

14 MS. MARCUS: It was 2007, I believe.

15 THE COURT: Right. Well, so let me -- so is the
16 debtors' argument that the stipulation isn't the plan itself
17 and so it isn't really covered by 1114?

18 MS. MARCUS: That is the debtors' argument, Your
19 Honor --

20 THE COURT: Okay.

21 MS. MARCUS: -- that the stipulation, in fact,
22 uses --

23 THE COURT: That this is just a contract claim.

24 MS. MARCUS: It's a breach claim, exactly. The
25 stipulation --

1 THE COURT: All right.

2 MS. MARCUS: -- actually didn't say the plan is
3 hereby amended. It said the debtors shall amend the plan to
4 provide, et cetera.

5 THE COURT: Oh, there's probably principles of
6 ERISA that would apply to that, I'm assuming, right? Maybe
7 not? I don't know.

8 MS. MARCUS: I'm not sure, Your Honor, although we
9 have had our ERISA experts involved and they haven't noted
10 anything that would apply.

11 THE COURT: Okay. Okay.

12 MS. MARCUS: Finally, Your Honor, you know, our
13 alternative argument is if the Court sees fit to appoint a
14 committee in light of the debtors' cash position, in
15 particular, we would ask that the Court do what it did in
16 Delphi and limit the amount that the committee's
17 professionals are entitled to spend as well as the scope --

18 THE COURT: Well, let me just elaborate on that a
19 bit. When you say in light of the debtors' cash position, I
20 think it's more in light of the fact that the debtors are,
21 in fact, liquidating. So as Judge Lifland said in
22 Ionosphere, it's not the case here, the anticipated case
23 here, that a retirees committee would be doing the type of
24 work that a retirees committee would be doing in the context
25 of a reorganizing case where you're evaluating, as a union

1 would evaluate, and negotiating a request by the debtor to
2 cut benefits in order to enable the debtor to continue in
3 business which is a much more expensive protracted process
4 that involves financial professionals and multi-party
5 negotiations and the like. This is -- I mean, the debtors'
6 argument is pretty -- it's going to be pretty clear, which
7 is there won't be a debtor to fund these benefits --

8 MS. MARCUS: That's correct.

9 THE COURT: -- in the future.

10 MS. MARCUS: I suspect if there's any role for a
11 retiree committee, it would really be determining the amount
12 of the claims of the retirees --

13 THE COURT: And/or arguing the debtors' point
14 about vesting and/or arguing what the claim actually is. I
15 mean, it's still not clear to me when the dollar numbers are
16 cited whether that -- maybe this is -- maybe I just don't --
17 I'm missing a key point about these two insurance plans.

18 Is the class the only beneficiary of these two
19 plans? Or do the insurance arguably apply to other folks,
20 too? In other words, when you're paying the premiums, are
21 you paying it for every retiree including those after 1997
22 or is it just for these --

23 MS. MARCUS: Well, it's --

24 THE COURT: -- people?

25 MS. MARCUS: -- only -- I think that the premiums

1 are probably for every retiree.

2 THE COURT: Okay.

3 MS. MARCUS: But that -- the stipulation of
4 settlement --

5 THE COURT: Right.

6 MS. MARCUS: -- only applies to those people who
7 had vested --

8 THE COURT: Right. So --

9 MS. MARCUS: -- before because what happened was
10 there was a change in the reduction of the benefit --

11 THE COURT: Right.

12 MS. MARCUS: -- for those people.

13 THE COURT: So to me, that would be a role that a
14 retiree committee would play, too, which is, okay, who is
15 covered by 1114. You know, I think this committee would be
16 those -- would be representing those who are in the class
17 and if the debtors and the committee counsel disagree on
18 who's in the class and what the premiums are, you know,
19 monthly premiums -- the monthly premiums are high here for
20 one group at least. They're high for both. Then that would
21 be sorted out, too.

22 MS. MARCUS: I don't know that there's any dispute
23 on that issue, though, Your Honor. Nobody's come forward
24 who's a more recent retiree and taken issue with the
25 termination of the plan.

1 THE COURT: No. I understand but the debtors are
2 saying that the monthly cost is x. But that covers
3 everybody. Maybe. But the monthly cost, if it's just the
4 people covered by the stipulation might be x minus a
5 question mark. And you and a retiree committee that
6 represents those people may have to sort out what that is.

7 MS. MARCUS: That's true, Your Honor.

8 THE COURT: It may be easy to do because you know
9 who the people are.

10 MS. MARCUS: Well, that hasn't seen --

11 THE COURT: There's a list.

12 MS. MARCUS: That hasn't been so easy for us to
13 determine --

14 THE COURT: All right. Well, I mean --

15 MS. MARCUS: -- but it turns out we think we do
16 know who they are.

17 THE COURT: I mean, there is a -- there's an
18 exhibit referred to in the stipulation.

19 MS. MARCUS: The exhibit to the stipulation --
20 it's a little morbid. But my understanding is the exhibit
21 to the stipulation had 70,000 names on it.

22 THE COURT: Yeah.

23 MS. MARCUS: It's gigantic.

24 THE COURT: Right.

25 MS. MARCUS: And over time, because these were

1 elderly people --

2 THE COURT: Right. So you have to figure out --

3 MS. MARCUS: -- the size of this --

4 THE COURT: -- who's still around from that
5 exhibit.

6 MS. MARCUS: That's correct.

7 THE COURT: So that's a function, too. Okay. All
8 right.

9 MS. MARCUS: Thank you, Your Honor.

10 THE COURT: Does anyone have anything further to
11 say on this?

12 MR. GERSON: I just want to add, Your Honor, that
13 your inclination was correct. Under ERISA, you just don't
14 look at the four corners of the "plan" to figure out what
15 the plan document is. Very often, there is decisions where
16 provisions in state law that are in conflict with the plan
17 terms but are not preempted because ERISA preserves. State
18 insurance laws are viewed as becoming provisions of the
19 plan.

20 Also, you have the situation in Devlin where --

21 THE COURT: In what?

22 MR. GERSON: Devlin. The Second Circuit case --

23 THE COURT: Right.

24 MR. GERSON: -- in Devlin. It's not just the four
25 corners of the plan. People can get vested --

1 THE COURT: Right. No. I --

2 MR. GERSON: You understand.

3 THE COURT: I mean, I have vivid memories of
4 listening to my ERISA partners and thinking to myself they
5 must feel the same way when I explain bankruptcy law to
6 them. So I'm sure there's some issue there somewhere.
7 That's why ERISA partners --

8 MR. GERSON: Thank you.

9 THE COURT: -- are interesting people.

10 MR. GERSON: I'm sorry to revive bad memories for
11 you.

12 THE COURT: No, no. They're good memories.
13 They're interesting issues. It's just they're complicated
14 sometimes.

15 MR. LAWLOR: I won't mention anything about ERISA,
16 Your Honor.

17 THE COURT: Okay.

18 MR. LAWLOR: I just note that we attached a letter
19 to our reply dated 2010 which was sent by the insurance
20 company to retirees that expressly mentions the settlement
21 agreement and the litigation. So --

22 THE COURT: Right.

23 MR. LAWLOR: -- everybody was aware that that was
24 governing -- it was a governing document. So I suspect that
25 no matter what we find, we're going to find that the

1 stipulation was always there. Thank you.

2 THE COURT: Okay.

3 MR. MORRISSEY: Good morning, Your Honor. Richard
4 Morrissey for the U.S. trustee.

5 The U.S. trustee did not put in a pleading. The
6 U.S. trustee has no position regarding the merits of the
7 motion. But the U.S. trustee does have a view concerning
8 the last point heading in the debtors' objection which had
9 to do with restricting the scope of the retirees' committee
10 if one is appointed and also putting a cap on fees.

11 We believe, Your Honor, that the committee should
12 not be hamstrung in its ability to carry out its fiduciary
13 duties. Its mandate, we believe, is already limited by
14 1114. In other words, unlike a creditors' committee, Your
15 Honor, the retirees' committee would not be ordered to get
16 involved in all aspects of the Chapter 11 case. I think
17 there's been some colloquy about that just this morning.

18 To the extent that there are any excessive fees by
19 professionals of a retirees' committee those can be
20 addressed in the context of the fee application process.
21 And also, Your Honor, the committee should not have
22 restrictions imposed upon it before it comes into existence.

23 So, Your Honor, with that, again, the U.S. trustee
24 has no position on the underlying motion. Just if the Court
25 is inclined to grant the motion, there's a restriction and

1 scope already in the statute and there's no reason for the
2 Court to repeat or add to that restriction in the order.

3 Thank you, Your Honor.

4 THE COURT: There's not a legal prohibition on
5 that, thought, right? This is just a policy statement?

6 MR. MORRISSEY: Yes, Your Honor. We -- if there
7 are people sitting on two sides of the table, one would not
8 have a fee restriction and the other would and we don't
9 think that that would be appropriate in this case.

10 THE COURT: It's been done repeatedly in all sorts
11 of cases with all sorts of committees.

12 MR. MORRISSEY: Your Honor, I think in this case,
13 we have a discreet issue. So to the extent, for example,
14 the debtors -- if you look at fee applications, Your Honor,
15 they'll have a project category to deal with the retirees
16 issue.

17 THE COURT: Right.

18 MR. MORRISSEY: They're not restricted with
19 respect to that issue. And we don't think --

20 THE COURT: Except as a practical matter.

21 MR. MORRISSEY: Well, they could be. And again,
22 both sides have the same restriction which would be the fee
23 application process in terms of reasonableness of the fees.

24 (Pause)

25 THE COURT: Okay.

1 MR. MORRISSEY: Thank you, Your Honor.

2 THE COURT: All right. I have before me a motion
3 to form a committee of retirees under Section 1114 of the
4 Bankruptcy Code.

5 The motion just uses the term "retiree". However,
6 it refers almost exclusively to a specific class of retirees
7 as defined in a stipulation of settlement dated October 5,
8 2001 and apparently approved in 2002 by the district court
9 for the Middle District of Illinois. A copy of the
10 stipulation of settlement was attached to the reply and
11 declaration in support of the motion as well as to the
12 disclosure statement objection.

13 It is not clear to me whether that class includes
14 all of the retirees who would be the beneficiaries under the
15 two life insurance plans referred to in the stipulation of
16 settlement and the motion. And the Sears retiree group life
17 insurance plan that apparently was the vehicle under which
18 those two life insurance policies or programs were set up.

19 This is a relevant issue because the scope and
20 nature of the committee, if I appoint one, are important.
21 Thus far, these insurance policies in the Sears retiree
22 group life insurance plan are the only benefit plans that
23 I'm aware of that would meet the definition of retiree
24 benefits under Section 1114(a) of the Bankruptcy Code.
25 Namely, payments to any entity or person for the purpose of

1 providing or reimbursement payments for, among other things,
2 death under any plan, fund or program maintained or
3 established in whole or in part by the debtor prior to the
4 filing of the bankruptcy case.

5 It's important also because the debtors have
6 contended that under the group life insurance plan itself
7 and the policy terms, they have the absolute right to
8 terminate the plan and policies. That is not contested by
9 the movant except as follows and it's a big exception. The
10 movant refers to paragraph 3 of the stipulation of
11 settlement that I referred to earlier headed "Creation of
12 Permanent Retiree Life Insurance Benefits for Class Members"
13 wherein the defendants agreed, among other things, that
14 "Except as expressly provided herein, this stipulation of
15 settlement is not subject to any reservation of rights or
16 unilateral change of any kind by Sears. Within a reasonable
17 period after the final approval of the settlement, Sears
18 will amend the plan and summary plan description to the
19 extent necessary to incorporate paragraphs 3.1, 3.2, 3.3, 7
20 and 8 of the stipulation."

21 3.1 says "Defendants will not accelerate the rate
22 of reduction in the amount of life insurance for any class
23 member beyond that announced in September 1997 communicated
24 to retirees in the form of your personalized life insurance
25 information response form."

1 3.2 provides that "For approved claimants,
2 Defendants will not reduce their retiree life insurance
3 amount to less than the total of \$5,000 plus any life
4 insurance reductions foregone and amounts restored, if any,
5 under paragraph 8."

6 And 3.3 provides that "For class members who are
7 not approved claimants, Defendants will not reduce their
8 retiree life insurance amount to less than \$5,000."

9 As with many such class action settlements, there
10 was an opt out provision as well as a provision for filing
11 claims which ties into some of those definitions.

12 The movant therefore -- or the movants therefore
13 contend that, in fact, Sears does not have the unilateral
14 ability to terminate the insurance plan and the insurance
15 policies for the class plaintiffs as laid out in the
16 paragraphs that I've just summarized or quoted from.

17 That is important because at least in the Second
18 Circuit, at the lower court level, the courts have
19 interpreted Section 1114 of the Bankruptcy Code to operate
20 under the actual terms of the plan at issue. Namely, where
21 Section 1114(e)(1) provides: "Notwithstanding any other
22 provision of this title, the debtor-in-possession shall
23 timely pay and shall not modify any retiree benefits except
24 that" and then there's a mechanism for doing so with the
25 authorized representative of those retirees.

1 The Courts in the Southern District of New York
2 have held that a debtor-in-possession does not modify
3 retiree benefits when the benefits themselves acknowledge
4 the right to modify. The Third Circuit in *In re Visteon*
5 Corp., 612 F.3d 210 (3rd Cir. 2010), disagrees with that
6 interpretation, I think somewhat unfairly, contending that
7 it's just a policy interpretation as opposed to interpreting
8 the word "modify" and "plan". But the motion contends with
9 some force, I believe, that this is really not relevant as
10 to the class members since, under Section 3, Sears agreed
11 not to modify the insurance plan as set forth in that
12 section.

13 But it does appear to me that that agreement, if,
14 in fact, part of the plan, an issue I'm not prepared to
15 decide today in the context of this motion, waived it's
16 right to -- actually, in effect, amended the plan as a
17 matter of law. So it can't be terminated as to that class.
18 And I'd certainly agree with that analysis. It's completely
19 consistent with *In re Delphi Corp.*, 2009 Bank. LEXIS 576
20 (Bank. S.D.N.Y. March 10, 2009) and the other cases that the
21 debtors have cited in their objection to the motion.

22 It does not appear to me to be the case that
23 anyone disputes that the plan is, in fact, a retiree benefit
24 as defined in Section 1114. So if, in fact, there's a
25 serious issue as to whether the debtors have the ability to

1 terminate it as to the class, the appointment of a
2 committee, as I did in Delphi, would be warranted rather
3 than leave that issue hanging and subject the debtors to the
4 risk of violating Section 1114(e) and/or Section 1129(a)(13)
5 when their plan comes up for confirmation.

6 The debtors have also argued that because this is
7 clearly a liquidating case, the debtors have sold
8 substantially all of their assets and they propose a
9 liquidating Chapter 11 plan, Section 1114 shouldn't be read
10 to apply. There is some logic to that argument given the
11 reference in Section 1114 to reorganization not liquidation
12 and to some of the legislative history especially
13 Congressman's Fish's floor remarks where he seemed to think
14 that there was a distinction between liquidation and
15 reorganization although one could also read those remarks to
16 view this is a distinction between Chapter 7 and Chapter 11.

17 But although the argument has been acknowledged in
18 a number of bankruptcy cases, I'm not aware of any case,
19 except arguably one, that holds that a Court should not
20 appoint a committee or has the discretion not to appoint a
21 committee where it appears one would otherwise be warranted
22 simply because the debtor is in liquidation mode or has
23 liquidated but is still in Chapter 11.

24 I think the best analysis of this actually is in
25 In re SAI Holdings Ltd., 2007 Bank. LEXIS 1051 (N.D. Oh.,

1 March 26, 2007) at pages 16 -- I'm sorry -- excuse me -- at
2 pages 12 through 16. And I adopt that analysis.

3 I also agree with former Chief Judge Lifland's
4 view in In re Ionosphere Clubs Inc., 134 B.R. 515 (Bank.
5 S.D.N.Y. 1991), that Section 1114 applies in liquidating
6 cases. But when applying the Court's discretion under the
7 statute to consider a request to modify or terminate for
8 retiree benefit, one needs to take into account the fact
9 that the debtor is, in fact, liquidating and not, in
10 essence, present the debtor with a superpriority by
11 employing a more constricted definition of the term
12 "reorganization" in the statute.

13 So I believe a committee should be formed here.
14 There's enough of a serious issue as to the class members
15 that the debtor does not have the right, under the plan
16 itself, to terminate the plan for me to reach that
17 conclusion. I say that notwithstanding that there's no
18 evidence that the plan itself was ever amended. And it may
19 be that the debtors would actually be able to convince the
20 Court that the plan itself is still modifiable under
21 applicable law or terminatable at will under applicable law,
22 but given the settlement stipulation and my limited
23 knowledge of ERISA, that's not necessarily an easy argument
24 to win.

25 That leaves the issue as to whether the committee

1 should have a budget and/or a limited function here. I am
2 somewhat reluctant to prescribe the function of the
3 committee definitionally other than saying who it's
4 representing which I think I've already done. But I do
5 think a budget is warranted here as a reality check subject
6 to, as was the case in Delphi, the right to come back and
7 show the Court that really additional work beyond the budget
8 was warranted. To me, the major issues here, and perhaps
9 the only issues here for a committee to deal with, are less
10 the rationale behind a rejection or termination of these
11 policies which, unfortunately, given the fact that the
12 debtors are liquidating, colloquially is kind of a no-
13 brainer, unfortunately, but rather who is covered by the
14 stipulation, how those people get notice, what can be done
15 to work with them to get alternative coverage and/or perhaps
16 some funding and the like.

17 Given my sense that many of the beneficiaries of
18 the plan are seniors who would benefit from counsel on those
19 types of issues alone, I think that's certainly well spent
20 time.

21 So I will set a budget of \$250,000. It doesn't
22 mean that it needs to be spent, obviously. On the other
23 hand, as I said before, if legitimate good faith work led to
24 the incurrence of another 50,000 or something, professional
25 counsel could come back and ask for an increase.

1 I don't think that tilts the playing field here.
2 I don't believe the debtors are in any position to overwhelm
3 counsel with their resources given the financial picture of
4 these estates either. So while the U.S. trustee's concern
5 may be realistic in other cases, I don't think it is here.

6 So I will ask counsel for the movants to e-mail an
7 order granting the motion as I've provided it. You don't
8 need to formally settle that order but you should provide a
9 copy to counsel for the debtors, to the DOL and to the
10 committee just to make sure it's consistent with my ruling,
11 and the U.S. trustee.

12 MR. LAWLOR: Thank you, Your Honor.

13 THE COURT: Thank you. And I expect the U.S.
14 trustee will promptly form a committee.

15 Okay.

16 MR. SCHROCK: Thanks very much, Your Honor.

17 Again, Ray Schrock for Weil Gotshal for the debtors.

18 I thank the Court for a quick ruling on this and
19 we'll look forward to sitting down with the retiree
20 committee. I just want to echo your sentiments. We
21 certainly will not overwhelm the retiree committee. We want
22 to approach this issue fairly practically. We will file an
23 1114 motion just to make sure that we get that relief in
24 front of the Court. We'll sit down with the retiree
25 committee and address issues including notice, talk to them,

1 see if we can come up with an agreement with the other
2 constituents around claims, either claims allowance and
3 whether or not there's some other practical issues we can do
4 for the retirees. We certainly take no pleasure in
5 terminating anyone's benefits. And we tried very hard to
6 get the buyer to sort of assume those benefits. It's not
7 surprising that they wouldn't ultimately agree to it. We'll
8 get through this quickly and we hope efficiently.

9 THE COURT: Okay. All right.

10 MS. PESHKO: Your Honor, Olga Peshko, Weil
11 Gotshal, for the debtors.

12 The next item on the agenda is number 3, the
13 motion of Jeffrey Pfeiffer for relief from the automatic
14 stay. Before I turn it over to counsel for the movant, I
15 just wanted to note for the Court that this motion was
16 previously heard at the April omnibus hearing and was
17 adjourned at that time so the debtors could provide evidence
18 that there is no insurance coverage available for the
19 2008/2009 period. Your Honor, the debtors did provide
20 movant's counsel with confirmation from their insurer,
21 Chubb, that coverage under the policy year -- for the policy
22 year 2008/2009, as well as the years 2005/2006 and
23 2006/2007, has been exhausted. However, movant's counsel
24 insisted we proceed with this hearing. So at this time, I
25 will cede the floor to Mr. Gallagher.

1 THE COURT: Before you do that --

2 MS. PESHKO: Okay.

3 THE COURT: -- the motion says that Mr. Pfeiffer
4 bought the weed killer going back to 1988.

5 MS. PESHKO: He did.

6 THE COURT: When did he first assert this claim?
7 I'm just wondering whether we need to go back beyond the
8 dates that you have --

9 MS. PESHKO: Sure.

10 THE COURT: -- you confirmed there's no
11 insurance --

12 MS. PESHKO: Right.

13 THE COURT: -- because the coverage is exceeded
14 because of statutory limitations issues.

15 MS. PESHKO: This has only been asserted with this
16 motion. The actual case has not been filed in any court.

17 THE COURT: Right.

18 MS. PESHKO: As I understand it from Mr.
19 Gallagher, the reason that they want to name Kmart is purely
20 for venue reasons. They want to file this action in Cooke
21 County, Illinois where they believe it is more plaintiff
22 friendly not because Kmart is a necessary party. And their
23 real intention is to go after two other parties that are not
24 Kmart.

25 THE COURT: Well, okay. But --

1 MR. GALLAGHER: Your Honor?

2 THE COURT: Yes.

3 MR. GALLAGHER: Dave Gallagher on behalf of the
4 movant. If I may?

5 THE COURT: Sure.

6 MR. GALLAGHER: So I did speak with counsel
7 yesterday and I explained to her that one of the issues with
8 regards to why we felt Kmart was a necessary party is for
9 the issue of venue. But obviously, there's independent
10 state law claims with regards to product liability to apply
11 to Kmart directly.

12 Our claim is that Mr. Pfeiffer purchased this
13 product from Kmart starting in 1988 running through 2014.
14 In Illinois, there's something on the discovery rule which
15 tolls the statute of limitations and a statute of repose.
16 In this case, the issue is the development of certain
17 cancers associated with this product. There was an article
18 that linked Mr. Pfeiffer's cancer to this product that came
19 out in approximately November of 2017. So that would be the
20 time that we'd argue that he knew or should have known of
21 the association between an exposure of this product and his
22 injury.

23 With regards to the insurance coverage, it's my
24 understanding that Kmart previously filed bankruptcy, I
25 believe, in 2001 and so any liability that it would have had

1 for any actions prior to that time were extinguished in that
2 bankruptcy. So I guess the relevant time period here would
3 be from that post-bankruptcy period through 2014.

4 THE COURT: Okay.

5 MR. GALLAGHER: Counsel has provided me --

6 THE COURT: No. Go ahead.

7 MR. GALLAGHER: I'm sorry, Your Honor.

8 Counsel has provided me with an e-mail from a
9 Chubb representative stating that it's their belief that the
10 general liability policy aggregate limits were exhausted for
11 all years prior to August 1st, 2017 including the policy
12 year of August 1st, 2018 through August 1st, 2019.

13 The reason this is critical is because it relates
14 to paragraph 18 of the debtors' response, which is ECF
15 docket number 3149. In that paragraph, it states, and I
16 quote, "The Debtors maintained various insurance policies in
17 their history over the prepetition period. Among them were
18 both general liability and umbrella policies that
19 potentially could have applied in the Movants' Actions."

20 So what the debtors admit is that they have two
21 forms of insurance, general liability and umbrella. All
22 they've proven and all they've provided to the Court and to
23 counsel is evidence that the aggregate limits on their
24 general liability policy have been exhausted. They have
25 provided no documentation to support what, if any, umbrella

1 coverage is still applicable for these claims. Now our
2 motion to lift the stay acknowledges that we're only
3 entitled to recover whatever available insurance proceeds
4 there are. There's a difference between the duty to defend
5 and the duty to indemnify. As there is still available
6 umbrella coverage for these claims, or at least there's a
7 likely possibility that there's available umbrella coverage,
8 the duty to defend these claims exists and there would be no
9 debt incurred by the debtors by allowing the stay, allowing
10 the claim to proceed in state court, limiting the claim to
11 whatever insurance proceeds there are. The insurance
12 company will have to pay for the defense. If it turns out
13 that the aggregate limits were, in fact, exhausted, Mr.
14 Pfeiffer is not entitled to any recovery from Kmart or any
15 other entity until his damages are proved to have exceeded
16 the aggregate limit of five million dollars. So
17 hypothetically, if he goes forward and gets a judgment for
18 ten million dollars, he can get five million dollars from
19 the umbrella coverage to the extent that it's still in
20 existence.

21 MS. PESHKO: If I could respond, two points, Your
22 Honor.

23 First, the umbrella coverage only applies when the
24 first five million dollars are spent towards a defense or
25 judgment. And so, the debtors would have to first spend

1 five million dollars on this action and there would have to
2 be some kind of five million dollar cost before umbrella
3 coverage would apply to this or any other action.

4 Second, you know, Mr. Gallagher keeps talking
5 about a judgment but the debtors would have to file an
6 appearance and defend this action. And there is no money
7 available --

8 THE COURT: Well, why would they have to defend?
9 Couldn't they just hand over the defense to the carrier?

10 MS. PESHKO: Well, the carrier -- the umbrella
11 policy is only available when the first five million dollars
12 is spent in this action, Your Honor. And so, the --

13 THE COURT: So if they didn't defend, they'd waive
14 their rights on the umbrella policy? Is that --

15 MS. PESHKO: I don't know that they'd waive their
16 rights, Your Honor, but either the insurer or Mr.
17 Gallagher's client would have a claim against the debtors.
18 Even if the insurer were to agree to defend even though that
19 first five million dollars has not been spent, the insurer
20 would then have a claim against debtors because they have
21 not met the eligibility for coverage.

22 THE COURT: Okay. Have you shown Mr. Gallagher
23 the policy so he could confirm that?

24 MS. PESHKO: We have not shown him the umbrella
25 policy, Your Honor.

1 THE COURT: Okay. Well, I think you should do
2 that. We should adjourn this so that you can show that to
3 him.

4 MS. PESHKO: We can do that, Your Honor.

5 THE COURT: In other words, Mr. Gallagher, what
6 you lay out makes sense unless the umbrella carrier, in
7 essence, gets a claim through the back door. And then the
8 debtor -- you know, it really isn't just against the
9 insurance because the insurer itself would have the right to
10 go against -- have the claim against the debtor.

11 MR. GALLAGHER: Sure. Your Honor, what I have
12 been provided what I think supports my position in this case
13 is a statement from what was at that time ACE Insurance
14 Company that's now been assumed by Aon is my understanding.
15 But in the coverage section of the relevant policies, and by
16 this I mean the general liability policies, it states, and I
17 quote, "We will have the right and duty to defend the
18 insurer against any suit seeking damages."

19 So the duty to defend, again, separate and
20 distinct from the duty to indemnify -- and while I
21 understand counsel's position that the duty to indemnify
22 under the general liability policies may be exhausted
23 through the payment of the aggregate limit, that does not
24 mean that the duty to defend is exhausted. The duty to
25 defend will continue on to the extent that there is some

1 reasonable argument that there may, in the future, be some
2 obligation on the part of the insurer to pay. And in this
3 case, because there is umbrella coverage, that duty to
4 defend would be triggered. So --

5 THE COURT: Well, I would need to see the umbrella
6 policy myself --

7 MR. GALLAGHER: Sure.

8 THE COURT: -- and the other policy to see how
9 they operate together and whether there'd be a claim over by
10 either insurer.

11 MR. GALLAGHER: Sure.

12 THE COURT: Illinois is not a direct action state?
13 You can't go directly against --

14 MR. GALLAGHER: No.

15 THE COURT: Okay.

16 MS. PESHKO: Your Honor, if we can show to the
17 movant that under both the general liability policy and the
18 umbrella policy the insurer would have a claim against the
19 debtors --

20 THE COURT: Yeah. Well, then I'll deny the
21 motion.

22 MS. PESHKO: Thank you, Your Honor.

23 THE COURT: I mean, it's not really against the
24 insurance then because it --

25 MS. PESHKO: Right.

1 THE COURT: -- through the back door becomes a
2 claim against the debtor. But -- so we should just nail
3 that down with each other. And if you disagree about it
4 then put it back on the calendar and I'll rule on it.

5 MS. PESHKO: Thank you, Your Honor. We'll adjourn
6 to a date to be determined --

7 THE COURT: Okay.

8 MS. PESHKO: And we'll --

9 THE COURT: I mean, if you have the policies, you
10 can probably do it in August, is my guess, July or August.

11 MS. PESHKO: Okay.

12 THE COURT: One of those dates.

13 MS. PESHKO: Okay. Thank you, Your Honor.

14 THE COURT: Although, again, I think you're both
15 clear on how I'm going to rule on this.

16 MS. PESHKO: That's right.

17 THE COURT: If it's truly --

18 MR. GALLAGHER: Yes.

19 THE COURT: -- just against the insurance, it
20 doesn't come back to bite the debtor through either of those
21 policies then I'll grant the motion. If it does come back
22 to bite the debtor then I'll deny it.

23 MS. PESHKO: Thank you, Your Honor.

24 MR. GALLAGHER: Your Honor, just for
25 recordkeeping, can we keep it on the July omnibus schedule?

1 I have a tight deadline --

2 THE COURT: Yeah, that's fine. We can adjourn it
3 to July.

4 MR. GALLAGHER: Thank you. Thank you, Your Honor.

5 THE COURT: Okay.

6 MS. PESHKO: Your Honor, the next item on the
7 agenda is number 4, the motion of Santa Rosa Mall, LLC, for
8 relief from the automatic stay, ECF number 3475.

9 THE COURT: Right.

10 MS. PESHKO: I will turn it over to counsel for
11 Santa Rosa.

12 THE COURT: Okay.

13 (Pause)

14 MR. CHICO-BARRIS: Good morning, Your Honor.

15 THE COURT: Good morning.

16 MR. CHICO-BARRIS: On behalf of Santa Rosa Mall, I
17 am Gustavo Chico along with Sonia Colon.

18 THE COURT: Okay.

19 MS. COLON: Good morning, Your Honor.

20 MR. CHICO-BARRIS: Your Honor, in this case, we
21 filed a motion for relief from stay. The motion is to who
22 one portion of it is being addressed through an adversary
23 proceeding subsequently filed. I'm not going to discuss
24 those.

25 THE COURT: Unless the portion seeking a

1 declaration that the proceeds of the insurance policy are
2 not property of the estate and therefore not subject to the
3 automatic stay.

4 MR. CHICO-BARRIS: Correct.

5 THE COURT: Right. Okay.

6 MR. CHICO-BARRIS: The portion that I would like
7 to submit to the Court are the causes of action that Santa
8 Rosa Mall has against the insurers and the insurance
9 carriers and the insurance broker.

10 In Puerto Rico, under the Puerto Rico Insurance
11 Code, Section 2003, we sustain that Santa Rosa has a direct
12 cause of action against the insurers. In addition, we've
13 referred that we have a direct cause of action against the
14 insurance producer who issued certificates of insurance that
15 were subsequently through this case proven to be false or
16 incorrect information. The insurance producer has stated
17 that Santa Rosa was a loss payee and through the discovery
18 in this case, that was not so. And that is sanctionable in
19 Puerto Rico under the Puerto Rico Insurance Code as well as
20 the Puerto Rico Insurance Civil Code.

21 Sears sustains that this is related to the
22 bankruptcy case because Sears entered into a confidential
23 sentiment agreement for these insurance proceeds that has an
24 indemnity clause. And Sears purports that if we seek
25 damages against independent damages under non-bankruptcy law

1 pursuant to the Puerto Rico Code of Insurance and the Puerto
2 Rico Civil Code, that ultimately, the insurance companies
3 will seek to collect those damages from the debtors.

4 THE COURT: Okay. Can I break this into two
5 parts? The motion describes these claims, as far as I can
6 see, in two paragraphs. Paragraph 52 says, " Santa Rosa
7 Mall has causes of action against AIG Europe Limited, that
8 is, the Debtors' insurance company that issued the Contract
9 of Insurance, and Aon Risk Services Central, Inc., as
10 insurance producer or agency who issued a Certificate of
11 Insurance regarding Policy No." and then it lists the
12 number.

13 And then 55 says, " Santa Rosa Mall seeks relief
14 from the automatic stay to prosecute independent
15 non-bankruptcy claims against the insurance company, its
16 underwriters, agents and/or producers under non-bankruptcy
17 law arising from the resolution and payment of such
18 insurance claim in detriment of Santa Rosa Mall."

19 Now I understand -- you're saying the claim
20 against the insurance broker or agency is based on their
21 providing a certificate that shows loss payee status for the
22 mall, right?

23 MR. CHICO-BARRIS: Correct.

24 THE COURT: What is the claim against the other
25 entities that you identify here, the insurance company, its

1 underwriters, agents and/or producers?

2 MR. CHICO-BARRIS: Yes. I'll explain. Under the
3 Puerto Rico Insurance Code and under the Puerto Rico Civil
4 Code, because the insurance code provides a direct cause of
5 action against the insurer, and if the insurance company --

6 THE COURT: For what? None of this is in your
7 papers. I am someone who likes to read things so I'm not
8 reacting well to this, particularly since your papers have
9 already been inaccurate in describing the facts and the law.
10 So what section are you referring to?

11 MR. CHICO-BARRIS: I am talking about Section
12 2003 --

13 THE COURT: Of --

14 MR. CHICO-BARRIS: -- of the Puerto Rico Insurance
15 Code. That would be 26, Loss of Puerto Rico Annotated 2003.

16 THE COURT: Okay.

17 MR. CHICO-BARRIS: And in addition, under the
18 Puerto Rico Civil Code, if a party pays incorrectly to
19 someone, the Puerto Rico Civil Code --

20 THE COURT: Okay.

21 MR. CHICO-BARRIS: -- suggests --

22 THE COURT: So let me stop you there. Isn't that
23 the issue in the adversary, too? You're saying that you are
24 entitled to the proceeds and the debtors are saying no, they
25 are. So how can you say paid incorrectly is independent

1 from the bankruptcy. It's in the adversary proceeding.

2 MR. CHICO-BARRIS: If I may. Because even if the
3 insurance companies paid whatever they paid to the debtors,
4 under Puerto Rico law, if they paid incorrectly only to one
5 party, Puerto Rico Civil Code demands that the party who
6 paid wrong or incorrectly pays whoever it was entitled to
7 receive those damages.

8 THE COURT: But that issue was already teed up in
9 front of me.

10 MR. CHICO-BARRIS: Well, we haven't sued the
11 insurance companies in the adversary proceeding.

12 THE COURT: Well --

13 MR. CHICO-BARRIS: And --

14 THE COURT: But the incorrect part is in front of
15 me. That part.

16 MR. CHICO-BARRIS: What is in -- what the
17 adversary proceeding seeks -- it stems from the same source,
18 I guess, that basically Santa Rosa falls under coverage of
19 the insurance -- of the policy.

20 THE COURT: Right.

21 MR. CHICO-BARRIS: But that action can also be --
22 that defense can also be claimed against the insurance --

23 THE COURT: It can but why would have two parallel
24 lawsuits going? They could get two different results.

25 MR. CHICO-BARRIS: Because one -- the remedies are

1 different.

2 THE COURT: But it's the same facts and the same
3 determination. And would the debtor be then subject to
4 collateral estoppel so the debtor would have to appear in
5 that lawsuit, too?

6 MR. CHICO-BARRIS: Well, we referred that they
7 don't have to because --

8 THE COURT: No. You didn't answer my question.
9 Would collateral estoppel apply to the debtor in that
10 lawsuit? After all, the insurer was in privity with the
11 debtor. In most jurisdictions, those are in privity or even
12 broader term, it doesn't have to be contractual privity but
13 they use the term "privity" -- is binding on the defendant, or
14 the party that loses, and their privies. So I just don't
15 see this as a basis for lifting the stay on that type of
16 lawsuit.

17 MR. CHICO-BARRIS: But -- I guess they could. But
18 we also seek remedies against Aon --

19 THE COURT: That's why I'm breaking it into two.
20 But as far as going against the insurer or its agents, et
21 cetera, I don't -- I mean -- you haven't given me these two
22 statutes but you summarize them. They're both for wrongful
23 payment, right?

24 MR. CHICO-BARRIS: Right.

25 THE COURT: Okay. So again, what's at issue in

1 front of me is whether the payment is wrongful or not
2 because who should they be paying, the payee or someone who
3 asserts a right to reform or an equitable lien or a
4 constructive trust or whatever it is that is the basis for
5 the adversary proceeding.

6 MR. CHICO-BARRIS: The adversary proceeding
7 doesn't -- I guess my point is it does not include Aon.

8 THE COURT: Well --

9 MR. CHICO-BARRIS: And --

10 THE COURT: -- I know. But it does include the
11 issue of wrong --

12 MR. CHICO-BARRIS: -- it does include the issue
13 of --

14 THE COURT: Improper payment, wrongful payment --

15 MR. CHICO-BARRIS: Right.

16 THE COURT: -- et cetera.

17 MR. CHICO-BARRIS: The stem is -- or the root
18 would be --

19 THE COURT: Right.

20 MR. CHICO-BARRIS: -- if Santa Rosa is entitled to
21 remedy under that insurance policy.

22 THE COURT: Right.

23 MR. CHICO-BARRIS: Yes.

24 THE COURT: So let's turn to Aon as the broker
25 then.

1 MR. CHICO-BARRIS: Well, in this case, Santa Rosa
2 had received before Hurricane Maria certificates of
3 insurance stating that the policy included Santa Rosa as a
4 loss payee.

5 THE COURT: Who sent those certificates?

6 MR. CHICO-BARRIS: Aon. And Sears provided them
7 under the lease agreement.

8 THE COURT: No, no, no. Who sent them to you?
9 Who communicated them to you?

10 MR. CHICO-BARRIS: Yes. Under the lease
11 agreement, Sears had to provide them as proof of insurance
12 to my client.

13 THE COURT: Right. So what is the basis for the
14 claim against Aon?

15 MR. CHICO-BARRIS: That it provided when it issued
16 the certificates of insurance, it represented to Sears and
17 my client, of course --

18 THE COURT: How did they represent it to your
19 client?

20 MR. CHICO-BARRIS: Because under the lease
21 agreement, the debtor was supposed to give -- to provide
22 Sears with proof of insurance --

23 THE COURT: Right.

24 MR. CHICO-BARRIS: -- and --

25 THE COURT: So how is Aon involved in that?

1 MR. CHICO-BARRIS: Well, the certificates of
2 insurance that were --

3 THE COURT: No. No. How does Aon know that --
4 know about the lease? I mean, you're alleging a fraud claim
5 against them, right? Or is it something else? I'm just
6 trying to figure out what the claim is to see whether the
7 debtor would be drawn into this litigation.

8 MR. CHICO-BARRIS: Well, I don't see how because
9 what the debtor did, what Sears did was simply to provide
10 them under its obligations under the lease agreement --

11 THE COURT: Whose agent was Aon?

12 MR. CHICO-BARRIS: Sears.

13 THE COURT: Okay. And Aon --

14 MR. CHICO-BARRIS: Sears was --

15 THE COURT: -- provided the certificate to Sears.

16 MR. CHICO-BARRIS: Yes.

17 THE COURT: So what is the basis for your claim
18 against Aon?

19 MR. CHICO-BARRIS: That when Aon -- let me go
20 back. The lease agreement required --

21 THE COURT: I know what the lease agreement
22 requires. What is the basis for your claim against Aon?

23 MR. CHICO-BARRIS: That when Aon included by name
24 Sears -- my client expressly in the certificate of
25 insurance, it represented to Sears and my client, through

1 Sears --

2 THE COURT: That's where I'm having a hard time.

3 MS. COLON: Your Honor --

4 THE COURT: How did it represent to your client
5 through Sears if it -- that's -- I mean, look, if I defraud
6 you, right, in some way or break a contract with you, that
7 doesn't necessarily mean that your colleague has a cause of
8 action against me.

9 MR. CHICO-BARRIS: Well --

10 THE COURT: And it probably means -- this is what
11 I'm exploring. It probably means that when your colleague
12 sues me, I'm going to sue you, i.e., Aon will sue Sears or
13 join Sears in the litigation because it was Sears' agent.
14 And it made the representation to Sears. I don't know what
15 the circumstances were that Aon knew. And the basis for
16 your motion is that this is not going to affect the estate
17 because it's a cause of action against Aon. But I'm not
18 sure that's right. I don't have any facts to back that up,
19 in other words.

20 MR. CHICO-BARRIS: I'm not 100 percent sure and I
21 don't want to misrepresent the Court --

22 THE COURT: Right.

23 MR. CHICO-BARRIS: -- but I believe that there
24 were letters sent to Aon stating, look, under the lease
25 agreement, I am supposed to be a loss payee. And they

1 included the references of the lease agreement. But my
2 client believed those statements and it relied on those
3 statements as proof of insurance.

4 THE COURT: Well, it may -- I mean, it has a claim
5 against Sears. It has asserted -- it has a claim against
6 Sears. But I'm just --

7 MR. CHICO-BARRIS: I --

8 THE COURT: It may be that you have an independent
9 claim against Aon. I just don't really have enough to know
10 that at this point. And moreover, is there any sort of
11 limitations period you're up against --

12 MR. CHICO-BARRIS: No --

13 THE COURT: -- in suing them?

14 MR. CHICO-BARRIS: -- not under Puerto Rico law,
15 no.

16 THE COURT: Okay. All right. So my inclination
17 is to have some more -- to learn something more about this.

18 Let me step back a step. You probably teed up the
19 underlying dispute which is what are your rights, if any,
20 under the policy. That's before me in the adversary
21 proceeding where it should be because you're looking for a
22 declaratory judgment as to what's property of the estate and
23 what isn't. I don't want to have multiple litigations.
24 It's pretty clear to me that that would be the case on the
25 causes of action against the insurer and its agents. It's

1 not crystal clear to me that that's the case with regard to
2 the broker. But it may well be, particularly based on what
3 I've heard so far in the case that all of the issues as to
4 what Santa Rosa was entitled to under the policies is going
5 to creep in to the litigation against the broker. And the
6 issue of whether the broker had any duty and law to Santa
7 Rosa Mall.

8 MR. CHICO-BARRIS: Well, what we can do is amend
9 the motion for relief from stay --

10 THE COURT: I guess.

11 MR. CHICO-BARRIS: -- to include further --

12 THE COURT: I mean, I guess, although we're
13 proceeding with the litigation. If there's no statute of
14 limitations, maybe the adversary proceeding should be
15 decided first and then you can -- you know, at that point,
16 it would be a lot clearer in what relationship you stand
17 with the debtor. And, you know, maybe it's the debtor that
18 has a cause of action against Aon at that point.

19 You know, I wouldn't want -- in other words, it
20 just seems to me that the mall's rights under the policy
21 and/or to the proceeds is kind of the first step here in any
22 litigation, particularly since the broker was the debtors'
23 broker. If it was doing something improper then that's an
24 issue and the debtor may want to go after them depending on
25 how the adversary proceeding turns out. And if the

1 adversary proceeding turns out in your favor, and the
2 money's there, then the broker's going to say, well, there
3 are no damages and motion is miss. So it seems to me that
4 adversary proceeding is the first call.

5 But in any event, I don't have the facts today --

6 MR. CHICO-BARRIS: Very well.

7 BY MR. CHIRLS:

8 Q -- to really go through it all. I don't know. You
9 maybe have more to say. The debtor probably wants to say
10 something on this. Maybe not. I don't know.

11 MS. MARCUS: Jacqueline Marcus, again, Your Honor.

12 I'll be very brief.

13 You've said most of what I was planning on saying.

14 THE COURT: Okay.

15 MS. MARCUS: And the bottom line is that the
16 standards for relief from the automatic stay aren't present
17 here. Even a cursory look at the Sonnax factors leads to
18 the conclusion that, as you said, the adversary proceeding
19 should be decided first and then let's see where we are at
20 that point.

21 THE COURT: Okay. All right.

22 MS. COLON: Your Honor, if I may just -- I know
23 you set various questions regarding whether there is
24 independent causes of action under Puerto Rico law and there
25 are.

1 THE COURT: No. But it's a different -- I think
2 that's the problem with this motion. The fact that you may
3 have a cause of action doesn't mean you're entitled to
4 relief from the stay because you're defining the word
5 "independent" totally differently, I believe, than what the
6 statute requires, i.e., yes, there are other parties you can
7 sue. But if the debtor's going to be sucked into that
8 litigation for relief from stay purposes, you lose under
9 Sonnax.

10 MS. COLON: As insurer, the insurer is
11 responsible --

12 THE COURT: No. I'm sorry. You just don't get
13 this.

14 MS. COLON: I understand, Your Honor.

15 THE COURT: The rationale for suing the insurer
16 was that they paid wrongfully.

17 MS. COLON: Yes, Your Honor.

18 THE COURT: All right? The word "wrongful" is the
19 very issue in the adversary proceeding. Did they pay
20 wrongfully or was it properly paid to the debtor and now
21 could be property of the debtor's estate? If you brought
22 that litigation against the insurer, of course, the debtor
23 would have to intervene because that's the issue. And then
24 we have two litigations going at once with potential for two
25 different results. That's like -- a court would never grant

1 that relief under Sonnax.

2 So I'm going to deny the motion without prejudice.
3 You can renew it or you can just keep it on the calendar and
4 put it -- I'm not going to deny it. You can keep it on the
5 calendar and put it on for a hearing after a ruling in the
6 adversary proceeding on the merits.

7 I guess the one other basis for putting it back on
8 the calendar is if you can show me that you have a direct
9 relationship with Aon -- not with Aon -- with -- yeah, with
10 Aon, the broker, where they owe you a duty independent of
11 the debtors' conduct.

12 MS. COLON: That's our understanding so we'll
13 be --

14 THE COURT: Okay.

15 MS. COLON: -- amending. Thank you, Your Honor.

16 THE COURT: Thank you.

17 MS. MARCUS: Thank you, Your Honor. That brings
18 us to the next section of the agenda which is the Section
19 365(d)(4) matters.

20 THE COURT: Right.

21 MS. MARCUS: And that's going to be handled by
22 Cleary. I think Mr. Barefoot on behalf of Transform.

23 THE COURT: Okay.

24 MR. BAREFOOT: Good morning, Your Honor. Luke
25 Barefoot from Cleary Gottlieb Steen & Hamilton for Transform

1 Holdco and its affiliates.

2 Your Honor, as Ms. Marcus noted at the outset,
3 there was some confusion with the agenda. And in addition,
4 the leases that are going to be up for hearing today on
5 which we've reached agreement with landlords are sort of a
6 moving target. So with Your Honor's permission, I have what
7 is a very simplified form of agenda that I think would -- if
8 I may approach, would make it easy to walk through this.

9 THE COURT: Okay. That's fine.

10 MR. BAREFOOT: Your Honor, following the last
11 hearing that we had on these lease assumption and assignment
12 issues on May 8th, hundreds of leases were successfully
13 assumed and assigned to Transform and there were 54 leases
14 that had been designated by Transform that were the subject
15 of extensions under 365(d)(4).

16 We've been diligently working through that list.
17 As of today, six of those 54 already have orders entered
18 assuming and assigning them. And then, as you can see, on
19 this list, there are five additional leases which Transform
20 has filed proposed consensual assumption and assignment
21 orders where the presentment date has passed. And we will
22 submit electronic versions of those orders to chambers.

23 THE COURT: All right. I actually have six on
24 this. Is this page 3?

25 MR. BAREFOOT: I'm still on page 1, Your Honor.

1 THE COURT: Oh.

2 MR. BAREFOOT: There are five leases, the White
3 Plains, Key West, Burbank, West Orange and Williamsport
4 where we have notices of presentment that have been filed.

5 THE COURT: Okay.

6 MR. BAREFOOT: And then if you move to the second
7 section, and this is really just to give the Court an
8 overview of the progress we're making, there are a total of
9 30 leases where we either have already extended the Section
10 365(d)(4) deadline or shortly it will be further extended.
11 That breaks --

12 THE COURT: I guess I'm confused because --

13 MR. BAREFOOT: Okay.

14 THE COURT: I see. This is done by landlord as
15 opposed to number of leases.

16 MR. BAREFOOT: Correct. By --

17 THE COURT: Okay. All right.

18 MR. BAREFOOT: Yes, that's correct.

19 THE COURT: Got it.

20 MR. BAREFOOT: So, for example, you'll see under
21 1(a)(ii), it's Auburndale Property which represents two --

22 THE COURT: Two.

23 MR. BAREFOOT: -- separate locations.

24 THE COURT: So that's why it's five.

25 MR. BAREFOOT: Apologies for the misunderstanding.

1 THE COURT: No. That's fine.

2 MR. BAREFOOT: So that's why there are five that
3 are set for entry by Your Honor.

4 THE COURT: Okay.

5 MR. BAREFOOT: Then if we move to the section
6 where there will be a further extension, either already done
7 or in the process -- this is under II of the agenda you
8 have.

9 THE COURT: Right.

10 MR. BAREFOOT: There are a total -- you know,
11 there are two where the presentment date has already passed.
12 There are three where the presentment date is passing as we
13 speak. And then there are another eight where the
14 stipulations have been filed.

15 Finally, there's one large master lease which, in
16 three different tranches, covers 17 store locations and a
17 further extension of the 365(d)(4) deadline for those
18 Brookfield properties will be filed shortly.

19 THE COURT: Okay.

20 MR. BAREFOOT: Bringing us then to the progress
21 that we're hoping to make today, the leases that are going
22 forward today with proposed orders.

23 We have a total of nine locations there that break
24 out into six different orders, again, based on the landlord
25 that covers those locations. The first one is for KDI

1 Rivergate Mall in Goodlettsville, Tennessee. The second one
2 is Westwood, Massachusetts.

3 Your Honor, with respect to Westwood, you may
4 recall that at the last hearing, this landlord had made a
5 Section 365(1) demand for nine months of security.
6 Transform served discovery on the landlord concerning that
7 demand after the hearing and the landlord has since
8 withdrawn the request for the 365(1) deposit. So we have a
9 consensual form of assumption and assignment order.

10 THE COURT: Okay.

11 MR. BAREFOOT: The third order covers three
12 locations, Lebanon, Tennessee; McAllen, Texas; and Warsaw,
13 Indiana.

14 Your Honor, the fourth order --

15 THE COURT: So, I'm sorry. These are --

16 MR. BAREFOOT: Yes.

17 THE COURT: -- agreed orders at this point?

18 MR. BAREFOOT: The first five of them are agreed
19 orders.

20 THE COURT: Okay. So KDI Rivergate Mall --

21 MR. BAREFOOT: KDI Rivergate, Westwood,
22 Massachusetts --

23 THE COURT: Right.

24 MR. BAREFOOT: -- Lebanon, McAllen and Warsaw are
25 all -- that I went through are all just consensual orders.

1 THE COURT: Okay.

2 MR. BAREFOOT: And I have the proposed orders
3 here.

4 THE COURT: All right.

5 MR. BAREFOOT: They're substantially in the
6 form -- all of these are substantially in the form of Your
7 Honor's May 13th order. I'm happy to hand them up or we can
8 just submit them to chambers.

9 THE COURT: No. You should e-mail them to
10 chambers.

11 MR. BAREFOOT: Very good, Your Honor.

12 The fourth order covers two locations, one in
13 Frederikstad (ph), Puerto Rico and one in Juana Diaz, the
14 Virgin Islands. Your Honor, for both of those, pursuant to
15 an agreement with the landlord in addition to the order,
16 there will be a related stipulation between Transform and
17 the landlord that specifically addresses certain hurricane
18 repairs that are being made at these properties.

19 THE COURT: Okay.

20 MR. BAREFOOT: The debtors are not a party to
21 these stipulations and we'll simply submit those to chambers
22 as well, with Your Honor's permission.

23 THE COURT: The stipulation?

24 MR. BAREFOOT: Correct.

25 THE COURT: You mean, they'll just be attached as

1 an exhibit or --

2 MR. BAREFOOT: It's a standalone document.

3 THE COURT: Are they to be so ordered?

4 MR. BAREFOOT: Yes, Your Honor.

5 THE COURT: Okay. But it's just between Transform
6 and the --

7 MR. BAREFOOT: And the landlord.

8 THE COURT: -- and the landlords. Okay.

9 MR. BAREFOOT: And then the fifth consensual
10 order, Your Honor, is with respect to the store in Clovis,
11 California where, again, the order is substantially in the
12 form of the May 13th order and is consensual with the
13 landlord.

14 THE COURT: Okay.

15 MR. BAREFOOT: That brings us to the last one
16 where I think there's a little bit of an asterisk around the
17 consent. This is with respect to Dart Warehouse Corporation
18 and the distribution center located in Naperville, Indiana.

19 Your Honor, the parties have been working
20 cooperatively on this. And the clients are our respective
21 clients have reached agreement on the cure amount to be paid
22 as a condition to assumption and assignment.

23 THE COURT: Okay.

24 MR. BAREFOOT: Transform has mailed the check that
25 represents the agreed upon cure payment. It has been cut by

1 Transform. We've given the landlord the check number but
2 the landlord has not been able to confirm receipt of the
3 check. Your Honor, it's our view that because the order
4 provides and orders Transform to pay the cure amount within
5 five business days, the landlord is adequately protected and
6 that there is no barrier to us moving forward with entry of
7 this order, particularly where the 365(d)(4) deadline will
8 expire before there is another omnibus hearing.

9 THE COURT: When does it expire?

10 MR. BAREFOOT: June 30th, Your Honor.

11 THE COURT: All right. Well, you've agreed on
12 everything, right? It's just whether the check bounces or
13 not?

14 MR. BAREFOOT: I think it's whether the landlord
15 has the check in its hands.

16 THE COURT: All right.

17 MR. BAREFOOT: But it's our position, Your Honor,
18 that the landlord has adequate remedies --

19 THE COURT: Well, why don't you just submit the
20 order before June 30th?

21 MR. FENNELL: Your Honor, may I be heard?

22 THE COURT: Sure.

23 MR. FENNELL: This is William Fennell on behalf of
24 Dart Warehouse.

25 THE COURT: Right.

1 MR. FENNEL: Since e-mails during this hearing
2 with Mr. Barefoot, I've received confirmation from the
3 client that it did receive payment.

4 THE COURT: Okay.

5 MR. FENNEL: And I've been provided with a copy
6 of the draft order sent to me yesterday as settlement
7 discussions so I haven't had an opportunity to review that.
8 It also refers to a stipulation which I didn't get. But as
9 Mr. Barefoot said, the clients are working cooperatively and
10 I have every expectation that we'll be able to submit an
11 order before June 30th.

12 THE COURT: All right.

13 MR. BAREFOOT: Your Honor, this is news to me but
14 I'm fine with that approach. The only thing I'd ask Mr.
15 Fennell to confirm is that to the extent it's required, he
16 will grant a further extension of the 365(d)(4) so we don't
17 have (indiscernible) rejection.

18 THE COURT: All right. That seems --

19 MR. FENNEL: Yes, Your Honor. I have that --

20 THE COURT: You have that authority and you're
21 confirming that in light of where the parties are at this
22 point, if for some reason the order doesn't get submitted or
23 entered before June 30th, there'll be an extension till the
24 next omnibus.

25 MR. FENNEL: That is correct, Your Honor.

1 William Fennell.

2 THE COURT: Okay. Very well.

3 MR. BAREFOOT: Very good, Your Honor. We'll
4 continue to winnow down this list of leases and we'll submit
5 these orders to chambers.

6 THE COURT: Okay. That's fine.

7 Is there any landlord here that believes they are
8 not covered by what we just went through or on the phone?

9 Okay. Thanks.

10 MR. BAREFOOT: Thank you, Your Honor.

11 THE COURT: All right. I think that's it for the
12 agenda today? No? Oh, oh, yes. There's --

13 MR. FAIL: Very close, Your Honor. Very close.

14 THE COURT: All right.

15 MR. FAIL: The final items on the agenda, Your
16 Honor, are the --

17 THE COURT: I didn't do that on purpose.

18 MR. FAIL: -- fee matters.

19 THE COURT: Yes.

20 MR. FAIL: Your Honor, there were 16 applications
21 on for hearing. There were no objections to any of them.
22 We communicated with the fee examiner that was appointed and
23 agreed to his request to insert language in the proposed
24 order that we would submit. That reserves the fee
25 examiner's right to review these applications in connection

1 and to -- in connection with approval of final fee
2 applications by the movants.

3 THE COURT: Right.

4 MR. FAIL: The fee examiner has, I believe, begun
5 his review but we didn't want to either delay this hearing
6 or put undue pressure on the examiner to conduct a full
7 review of all of the applications.

8 THE COURT: Right.

9 MR. FAIL: So --

10 THE COURT: Well, they're interim applications so
11 everyone has that right. But this just spells it out
12 specifically for --

13 MR. FAIL: We agreed to include it explicitly.

14 THE COURT: -- for the fee examiner.

15 MR. FAIL: That's right, Your Honor.

16 THE COURT: Okay. We've reviewed the applications
17 and nothing leaps out. But, you know, there has been
18 acknowledgment during the disclosure statement hearing that
19 administrative solvency is tight. The debtors believe
20 that's the case that they are administratively solvent but
21 they acknowledge that depending on how certain pending
22 disputes turn out, that may change. So I guess my question
23 is, under the fee order, there is a 80 percent payment every
24 month unless there's a dispute plus 100 percent of expenses.
25 So what you're really seeking here is confirmation of that

1 plus payment of the remaining 20 for these periods.

2 Are these payments part of the carve-out, i.e.,
3 they're allowed to be paid from collateral because there's
4 been no --

5 MR. FAIL: Yes, Your Honor. It's coming out of --

6 THE COURT: All right.

7 MR. FAIL: -- the carve-out reserve.

8 THE COURT: All right. So it's not really an
9 administrative solvency issue at this point.

10 MR. FAIL: Correct, Your Honor.

11 THE COURT: All right. So I will grant the
12 applications in the amounts sought --

13 MR. FAIL: Thank you, Your Honor.

14 THE COURT: -- as interim applications. So you
15 should e-mail -- I guess you can -- there are a lot of them
16 but I think you can do Schedules A and B and attach them to
17 the one order.

18 MR. FAIL: Thank you very much, Your Honor. We'll
19 do that.

20 THE COURT: Okay.

21 MR. FAIL: I think that concludes the agenda.

22 THE COURT: Okay.

23 MR. FAIL: And thank you very much for your time
24 this morning.

25 THE COURT: Thank you.

1 (A chorus of thank you)

2 (Whereupon, these proceedings were concluded at 11:52

3 a.m.)

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C E R T I F I C A T I O N

I, Lisa Beck, certify that the foregoing transcript is a
true and accurate record of the proceedings.

Lisa Beck Digitally signed by Lisa Beck
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Date: June 23, 2019

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